Hen: Liddell.

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THE JUSTICE OF THE Parliament,

In Inflicting of

PUNISHMENTS

Subsequent to

OFFENCES,

VINDICATED.

And the

Lawfulness of the Present Government

ASSERTED.

With some ANIMADVERSIONS upon the *Second Vindication of the Magistracy and Government of* England.

LONDON,

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XUM

THE JUSTICE of the PARLIAMENT, In Inflicting of PUNISHMENTS Subsequent to OFFENCES, VINDICATED, &c.

I. I Hapned two days since to meet a Sheet called, *A Second Vindication of the Magistracy and Government of* England; and upon perusal, found it to be a weak Effort to justifie what had been before writ in the behalf of the Government and its Ministers, for the Condemnation and Execution of my Lord *Russel*. It does particularly take notice of a Half sheet entituled, *A Justification of the Act which reverses that Noble Lord's Attainder*; And I must needs own, that if impudent, downright Affirmations of Law and Facts, passes for Argument and Proof, he has effectually performed what he arrogantly undertakes, which is, the refuting the Reasons and Authorities of that and the other more Learned late Prints

which have been publiſhed to do Right to the Name and Memory of a Perſon, whoſe Character is very well deſcribed by one of thoſe worthy Gentlemen, who atteſted in his Favour at his Trial, *That he was one of the beſt Sons, one of the beſt Fathers, and one of the beſt Maſters, one of the beſt Husbands, one of the beſt Friends, and one of the beſt Chriſtians we had.*

II. I ſhall not preſume to obtrude a Defence in the behalf of Sir *R. A.* and Mr. *H.* I ſhall not do them ſo much Injuſtice, as to impoſe on them ſo ill ad Advocate: And therefore the Province I do aſſign my ſelf principally is, to expoſe the Weakneſs and Fallacies of that Part of the Sheet which relates to the Juſtification, and ſhall not meddle with the reſt, farther than is neceſſary to make good the Authorities and Poſitions from which the Juſtifier infers that Noble Lord was ſo far from being guilty of a Legal Treaſon, that the Kings Judges and Counſel (in ſubſerviency to a Predeſtination of the State, for removing him right or wrong out of the way) were forced to call ſuch Vertues Treaſon, as in a more juſt and grateful Age would have deſerved Statues, Triumphs, and other Demonſtrations of Honour, paid by the *Romans* and other Nations to their Patriots, and the Aſſertors of the Liberties of their Country.

III. Our Author obſerves, (*pag.* 2.) *That Sir* R. A. *calls the Sentence and Execution a Murder; and if ſo, he is ſure that he is bound in Conſcience to proſecute an Indictment againſt the Judges, Recorder, the Grand and Petit Jury, &c.* But he concludes, *that none of theſe ſhew any fear of it.* The Juſtifier, and all that have writ on the ſame Subject, did alſo in effect, tho' not perhaps in expreſs Terms, concur in that Opinion; and for my part, I do not ſee how it can deſerve a more ſoft and gentle Appellation. Our Author ſays indeed, *The Perſons that were*

were concerned in it, are as safe as under an Act of Indempnity. My Temper and Disposition always inclines me to Mercy; and tho' I must allow in the Speculation, that the Executing of Justice upon Offenders is as great a Duty as shewing them Mercy; yet I find a very great difference in the Practice; the Exercise of Acts of Mercy being much more pleasing and agreeable than of Justice. But if I had the Honour of being a Member of Parliament, I should think that this natural Tendency of my Mind ought not to make me forget, that Acts of Indempnity, and all Humane Laws and Sanctions, must be consistent with the Statutes and Ordinances of God himself; and where he in his Sacred Word has been pleased to declare himself, in such Cases neither the Parliament, nor any other Political Constitution, can exert its Authority. There must therefore be some Account taken for the innocent Blood that has been spilt in this Kingdom of late Years.

There neither is, nor ever was, any Municipal Law in the World more careful to preserve the Lives of the Subject, than the Law of *England*; but 'tis not to be denied, that this Law hath suffered extremely in its Reputation both at home and abroad, and particularly in that excellent Part of it, Trials by Juries, because it hath been the Instrument and Property (tho' a forced and unwilling one) of its own and the Churches Enemies, to take away the Lives of this Noble Lord, and others, who they thought willing or able to obstruct or disappoint their Designs of introducing Popery and Tyranny. And shall there be nothing done to vindicate the Reputation of our Law, and to make it appear to the World, that the Fault was not in the Law it self, but in those wicked and corrupt Ministers and Judges who had the distribution of it?

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The Occasion and Inducement of the Statute of 25 E. 3 was, that corrupt Judges did adjudge Crimes Treason, that were not really so great: But our Modern Judges have exalted themselves beyond those; they have condemned a Man of Treason, that was not only innocent of the Crime, but was eminent for his Vertues, and indeed for no other Crime than discharging his Duty: For I do conceive, that 'tis a Duty incumbent upon every Subject, to support and defend the Government he lives under, and to oppose all Motions and Steps towards the Change and Alteration of it, that have not the Concurrence of the Legislative Authority.

I think this Proposition will be allowed as a Principle, and then I am sure my Lord *R.* is to be both justified and applauded for all that he transacted: For, what other Charge was he guilty of than this? King *Charles* the Second (who was a Concealed Papist, and by so much the more Dangerous) had, in conjunction with His Brother, (who was an Owned one, and by so much the more Generous) formed a Project to extirpate the Protestant Religion, and establish their own in these Kingdoms; and, as previous and necessary thereto, there was a necessity to destroy the Laws, and to change the whole Frame of the Government; for both, as they then stood, and were constituted, were such a strong Guard and Defence to the Protestant Religion, and were so particularly calculated against the return of Popery, that it was in vain to attempt any thing, either to the prejudice of the one, or in favour of the other, so long as the Laws and the Government continued.

Tho' there were formerly (I know) several good Protestants that were incredulous of this Design; yet the Transactions of the State after, and that King's owning himself a Romanist at his Death, has abundantly

ly ſatisfied all unprejudiced Men of the Truth of it ſince. My Lord *R.* was one of thoſe that had ſo early and ſo large a Proſpect in this Matter, that his Reaſon fully convinced him at that time of what every one has been ſince convinced of. Then the Treaſon of my Lord *R.* reſolves into this; That he being upon good and rational Grounds, determined in the belief that King *Charles* the Second and the Duke of *Y.* had conſpired to aboliſh the Church of *England*, and to ſubvert the Laws and the Government; and obſerving the Counſels, Meaſures, and all the Proceedings of the Court to be correſpondent to that End, and to have a direct and natural tendency towards it; He did joyn with one *Judas*, but with divers other Great and Worthy Perſonages, to conſider how to preſerve our Religion, our Government, and our Laws, in that time of danger and diſtreſs: For before the date of any of the pretended Treaſonable Practices objected to him, it ought to be remembred, 1: That the Fountain of all our Laws and Liberties, our High Court of Parliament, was polluted by Court-bribery and Subornation. 2. That it had been frequently and abruptly broke up and diſſolved, before it could perform any of the Truſts or Duties it owed to the Country. 3. That there was an infamous Declaration ordered to be read in all Churches, ſolemnly, in the time of Divine Service, againſt the Proceedings of the Houſe of Commons; which could have no other aim, than to render that part of the Conſtitution obnoxious to the People, and to make them believe it was become impracticable, and unſafe for the Government to aſſemble them. 4. That there was a mortal Wound given to the Privilege and Rights of Parliament, by the Trial of *Fitzharris* in the *Kings-Bench*, being under an Impeachment, and by the Encouragement and Welcome given to the Addreſſes and Abhorrences of the *Mobile*, importing a Condemnation of Parliamentary Proceedings. 5. That there had been Witneſſes tampered with, if

not actually ſuborned, to ſwear divers Noblemen and Gentlemen out of their Lives. 6. That there was a bold and open Incroachment on the Charter and Franchiſes of the City of *London*, which uſher'd in that general Deſolation which ſucceeded on all the Corporations of *England*. The extorting the Charters from all Cities and Burroughs by *Quo Warranto's*, and involuntary Surrenders (which divers were forced to make to ſave their Lands and their Charitable Donations, which they were threatned ſhould be otherwiſe ſeiſed) did effectually encompaſs the Deſign of overturning the Government. For all Writers in Politicks do agree in this Propoſition, That when the Legiſlative Power is removed, or altered from that Place, State, or Poſition in which it was ſetled upon the Original Conſtitution, that Government is diſſolved: And I think it very clear, that by the Deſtructions of the old Charters, and the Eſtabliſhment of our Cities and Burroughs under the new, the King had in effect uſurped the whole Legiſlative Authority: For he had before a Power over two Parts of it, which were Himſelf and the Houſe of Lords; becauſe he could preſer what Number he pleaſed of his own Creatures to be Members of that Houſe, who ſhould vote as He ſhould order and direct; and he had now got the Houſe of Commons under his Girdle, by the Powers he reſerved in the New Charters, to model and change the Magiſtracy, and the Officers who had the Conduct of the Elections, and the right of returning the Perſons Elected. In theſe violations of our civil Rights, ſome Perſons (as I have the Charity to believe) did ingage and concur through Inadvertency, not ſeeing through that Scheme which had been concerted between the two Brothers, for the bringing about their deſign, and theſe withdrawing from their Counſels when it appeared barefaced; and their being ſo inſtrumental and aſſiſting to the late Revolution, and the ſetling us in our preſent Condition of Happineſs, ſeems to Attone for paſt Errors.

rors. 7. It must not be forgot, that originally in *Scotland*, the Priviledges of the Subject were greater, and the Prerogatives of the Crown not so large as in *England*, and yet there the old Constitution was so demolished, that there hardly remained the Ruines of the ancient Government; but it might be said *jam seges ubi Troja fuit*, and there was (avowedly) exercised an Arbitrary and Despotick Jurisdiction. The Duty and Obligation of the King was as great to govern the People of *Scotland* according to their Laws, as to govern us according to our Law; and therefore we might conclude we should receive the same fate and the same measures of Justice, whenever the King should think it as safe and as feasible. There were these and several other palpable steps and advantages towards Popery and Arbitrary Power, antecedent to any of the Facts charged on my Lord *Russell*: And was it not every *English* Man's Duty as well as Interest, to endeavour a stop to the Course of those Counsels, which were so directly aimed and levelled at our Church and Government? And was there the least Proof that my Lord *Russell*'s Consent or Privity extended any further?

IV. In Page 3. He bestows large Commendations on the Person that was the Kings Sollicitor at that time, and excuses the Council, by saying, *That every Advocate is to do his utmost, and a failure had deserved the worst of Names, &c.* I do acknowledg that in all times Lawyers have allowed themselves too great a Latitude, when they Act meerly as Council, and 'tis an Opinion that has obtained among us, That we ought not judicially to be called to an Account for any thing we offer or press in favour of our Clyent, or against his Adversary, so we have it in our Instructions; and though I must always have a deference to the Memory of my Lord *Coke*, and must own my Obligations to his Learned and Painful Works, yet I cannot without the highest degree of

 Indignation,

Indignation, conſider his Conduct when he was Attorney General againſt Sir *Walter Raleigh* in his Tryal; nor can I forgive my Lord *Bacon* for his vehement and partial ſtreining of Law and Fact againſt his Patron and Benefactor the Earl of *Eſſex* in his firſt Tryal upon the Articles exhibited againſt him for miſcarriages in *Ireland*. But let it not paſs for Authentick Doctrine, That a Council is a Criminal, or that he does not perform his Duty if he does not impoſe falſe Law upon the Court, and falſe Facts, and falſe Conſequences deduced from the Facts upon the Jury, which was plainly done in the Caſe of my Lord *Ruſſell*, as has been already, and ſhall be in this again further evinced. As to the then Sollicitor's Character, if his Actings as Counſel againſt this Honourable Lord, and ſome other Perſons, be put in a Parentheſis, 'tis as great as any Man of the Profeſſion of the Law; but if he were my Father, I muſt condemn his Deportment in thoſe Caſes, and ſome others whilſt he was Sollicitor to the two laſt Kings.

V. In the ſame Page, our Author ſays, '*That the* '*World gueſſes that he who wrote the Reply* (viz. *Sir* R. A.) '*did write the half Sheet, called the Juſtification, and ſays* '*'tis really ſportive to read the Juſtifier, commending the* '*Defender and Replyant doing the ſame good Office for the* '*Juſtifier; and that he ſpends a whole Page in the moſt* '*fulſome Praiſes on that ſmall bulk Author, and rejoyces that* '*the Work was done to his hand, which is a very pretty Jeſt.* '*It is at moſt but* R. *for* A. *and* A. *for* R. *and* R. A. *ſtill,* '*which is much better than the contrary Practice, of which* '*ſome Authors have been guilty.* 1. The World he here means is (I dare ſay) his own ſelf, ſince none elſe can have ſo weak a Judgment, as ſo far to wrong the Defender, by ſuſpecting him to write ſo ſimple a thing; and I aſſure our Author, if I had not a very mean Opinion of his Underſtanding, the Juſtifier would value himſelf extreamly upon the miſtake. 2. The Juſtifier

Juſtifier owns the Defender to have diſparaged his Judgment, in the Praiſes he has beſtowed upon him, to which he was led by his Zeal and Affection to the ſubject Matter the Juſtifier writ upon; the Juſtifier diſclaims all Title and Merit to any other Commendation than this, That he writ upon no other Principle hope, or inducement, than the doing right to the Memory and Reputation of the Noble Lord who is dead, to his Lady, Children, and other Relations who are living; and to the Publick Juſtice and Laws of *England*, which were violently wreſted to give a Sanction to his Condemnation, that we may reaſonably preſume was firſt reſolved upon, before the Crime was conſidered or concerted that he ſhould be Condemned for.

3. He might have ſpared his Reflection on the ſmall bulk Author, ſince he was induſtriouſly ſo for the Reaſons therein mentioned, it being hinted, that it was deſign'd only for the ſatisfaction of ſuch as had not the opportunity, or wanted leiſure to peruſe the greater and more deſerving Works upon the ſame Subject.

4. In the next Print 'tis deſired our Author will be pleaſed to explain his laſt Period recited in this Section, *viz. It is at moſt but* R. *for* A. *and* A. *for* R. *and* R. A. *ſtill, which is much better than the contrary Practice, of which ſome Authors have been guilty.* I underſtand what is intended by the Capital Letters, but for my Soul I cannot find out the *Antecedent* to the *Relative It*; or if *It* be a Mark of impersonally, I am at a loſs for the *Antecedent* to the firſt *Relative Which*; and I am at a loſs to know what Practice it is that ſome Authors are guilty of contrary to the Practice of *R. A.* At preſent all this is unintelligible, and therefore the Author muſt pardon me if (until his Clavis or Commentary comes out) I put this Sentence under Title *Nonſence* in my common Place.

VI. In

VI. In Page 4. He ſays, *The Author of the Remarks quarrels with the legality of the Jurors, the Defender with that of the Indictments, and both with the Evidence. The Author of the Sheet differs from them in the two firſt, but agrees with them in the laſt.* The Author of the half Sheet, called the Juſtification, (which I ſuppoſe he means by the Author of the Sheet) is ſo far from differing from them in the two firſt, that he does think the Indictment faulty, and not ſo certain as it ought to be; but he conceives the Objections to the Jurors and to the Evidence are never to be got over. Indeed the Juſtifier takes no notice of the defects of the Indictment nor of the Jury; not only becauſe he could add nothing on thoſe Heads to what had been obſerved before, but likewiſe becauſe it was not ſo pertinent to his purpoſe, which was to frame and digeſt the Caſe of my Lord *Ruſſell* into ſuch a plain, ſhort, and eaſie Method, that no Perſon might want Leiſure to read, or Capacity to underſtand it: And therefore where he was obliged to uſe our legal Terms and Ideoms, he was very careful *to add an Explanation to them.* To underſtand the Force and Validity of the Objections to the Indictment, and to the Jury, there was required conſiderable Skill in Law and the Rules of Pleading; and the Juſtifier did not preſume to be able to inſtruct any one ſo qualified; but there is no Woman wants Logick to conclude, that my Lord *Ruſſell* was innocent, if it be true, as the Juſtifier affirmed, and proved by quoting his Authorities, *That his Sentence was againſt the expreſs and direct Opinion of the two greateſt Men of the Law, the Lord* Coke *and* Hales; *againſt the Opinion of ſeveral Parliaments; againſt a general and certain Maxime of the Law, and againſt the Firſt and Original end of making any Statute concerning Treaſons.* I ſay there could be none of ſo ſmall an Underſtanding, but muſt upon the reading, determine either, That the Judgment againſt my Lord *Ruſſell* was Illegal and Arbitrary, or that the Juſtifier was

was disingenious, in imposing upon the People false Quotations and Authorities, which even our Author has not the brow to charge him with, though he does endeavour to avoid the force of them by such distinctions, as shall be considered in their proper Place. Our Author therefore has given us a great Instance, either of his Candor or his Sence, by inferring that the Justifier differs in his Opinion from the two Learned Gentlemen abovementioned, as to the Indictment and Jury, because he was silent, and delivered no Opinion at all one way or other.

VII. In Page 5. He says, *That the Replyant refers his Reader to the Justification, and therefore let's examine that a little; a third part of it is spent upon the Evidence, but that is not within my Province*, &c. 1. He is extreamly mistaken in his Computation, for there is not a tenth part of it spent upon the Evidence: The Justifier did, and does conceive the Evidence in respect of the Character of the Witnesses in general, the particular Circumstances they were under, and of the subject Matter which they did Depose, to be so defective, and so far from maintaining the Charge of the Indictment, that he took it for granted, that there was none so hardy as to defend it. 2. But our Author did not consider well, when he said that the Evidence was not within his Province; for the Province he has undertaken, is to Vindicate the Government in its Proceedings against my Lord *Russell*; and if the Government be suspected and charged, for giving assurance to Prisoners, that they should be Pardoned or Hanged according as they Swore Matter to Convict or Acquit this Noble Lord and others, and for refusing to grant Pardons, until the Terms and Conditions of obtaining the same were actually performed, by swearing this Lord out of his Life to save their own; I say, if the Government be charged for using these and other indirect Courses, to procure

procure Evidence againſt him and others, (as it really is from the Mouth of one, if not more, of the Witneſſes themſelves) then the Government wants Vindication in that Particular, and conſequently the Evidence is as much within his Province as the Indictment and Judgment; and as the Actings of the Judges and Counſel, which in another place he owns to be his Province to defend and juſtifie. I deſire our Author hereafter, to poſtpone the giving his Works a Title till he has finiſhed them; for the Contradiction and Incongruity betwen the Title and Body of his Sheet is really a very great ſcandal and reproach to him.

VIII. In the ſame Page he goes on thus: *As to the reſt, the force of it, if any ſeems to be founded on his firſt Aſſertion, the Conſpiring to do a thing is not the doing a thing, and he quotes two great Mens Names for it, I would have agreed that, though he had ſpared the Authority to juſtifie it, but this is ſufficiently anſwered in the Sheet.* 1. Our Author now gives us an inſtance of his Sincerity, as he has done before ſeveral times of his Judgment; I deſire him to point at that part of the *Juſtification*, out of which he quotes that abſurd and ridiculous Aſſertion, *That the Conſpiring to do a thing is not the doing a thing.* I ſhould never have been able to gueſs what he meant, if he had not added the Quotation of the two great Mens Names; the two great Men are the Lords *Coke* and *Hales*, which the Juſtifier cites to prove, *That Conſpiring to Levy War is not Treaſon, nor an Overt Act to prove the Intention or compaſſing of the King's death.* The Juſtifier uſes their own Words, and tells his Reader ſo; and is not our Author a Man of a ſtrange Forehead, to Conſtrue Poſitions laid down by *Coke* and *Hales* ſo abſurdly? 2. If the Propoſition, *Conſpiring to Levy War is not Treaſon*, be to be *expounded*, (as our Author does) *That Conſpiring to do a thing is not doing the thing*, what becomes of our Judges, who have adjudged, *That the Conſpiring to do a thing was the doing a thing?* for they

they adjudged to Levy War, Treaſon, within the intent of Stat. *Edw.* 3. tho it be not in the Letter. Our Author one might think play'd Booty; for tho he aſſumes the Stile of the Judges Vindicator; yet he loads them with a more groſs and ſtupid Imputation, than either the Defence, Remarks, or Juſtification; but I'le be his Compurgator, I believe him true and faithful to his Truſt, this was a Blunder, and Blunders we find to flow from him, with a wonderful and natural Facility; and we may obſerve one more in this period, where he ſays, *This is ſufficiently anſwered in the Sheet:* Now, tho I never ſaw that Sheet (he muſt mean his firſt Sheet) till lately; yet, I am aſſured it was printed before the Juſtification came out, and then I deſire to know, how he comes to Anſwer a Paper he never ſaw, nor knew to be in being; there muſt be Propheſy or Revelation in the Caſe, that is certain; but admitting he had ſaid, That what was writ in the Sheet, did refute this part of the *Juſtification*, and ſo rendred an anſwer now unneceſſary, which was his intent, if he had any at all, I ſay, That to a general Affirmative, I can but oppoſe a general Negative, that 'tis not, *&c.* I confeſs I might have ſpared my Criticiſm on the Incorrectneſs of our Authors Expreſſions, ſince there are ſo many more important Faults and Errors, to entertain me with.

IX. In the ſame page, *He ſays, that the Juſtifier offers an Argument from the late Statutes declaring Treaſons; becauſe they were Temporary; but I anſwer as the Sheet doth, they were in affirmance of the Old Law; and I can ſhew him three or four Temporary, and an hundred other Acts of Parliament that are ſo, and therefore that is no Argument at all; but I am, as the Party I juſtify was, confined to a Sheet, and therefore cannot enlarge.* 1. The Temporary Statutes for making a bare Conſpiracy to levy War, Treaſon, were one of the Topicks from which the Juſtifier drew his Arguments to prove that it was not Treaſon within the intent of the Statute of *E.* 3. upon which my Lord *Ruſſel* was indicted; for he did, and does ſtill think, that ſo many Parliaments would not have

troubled themſelves to make ſpecial Statutes concerning it, if they had thought it Treaſon by any Statute before in being; and did alſo infer, that all thoſe Parliaments did not judge it fit to be a continued ſtanding Treaſon, becauſe then they would have made their Statutes perpetual, and not temporary. When there were Jealouſies and Apprehenſions of an Invaſion from a Foreign Enemy, and of the Subjects holding a correſpondency with him, as in Queen *Elizabeth*, and other Reigns; upon ſuch, and the like Emergencies, the Wiſdom of the Parliament did think fitting to make a Conſpiracy to levy War Treaſon; and there is no doubt but ſuch an Act would be at this time ſeaſonable. 2. His bare and confident averment that they were in affirmance of the Old Law, and that he can ſhew three or four Temporary Statutes that are ſo, muſt not bear down thoſe ſtrong Reaſons which induce me to believe that they were introductive of New Law; I believe he may be ſo learned as to produce a great many other Acts, that are only declaratory of the Old Law; but I'm ſure 'tis not common nor uſual to make temporary Acts in affirmance of perpetual Acts of Parliament, which is the Point in queſtion: For if our Author means any thing that is pertinent, 'tis that theſe temporary Acts are in affirmance of the Statute of *E.* 3. which is perpetual. 'Tis true, the temporary Statute of 13 *Car.* 2. (as our Author cites) does enact, That if any perſon or perſons whatſoever ſhall, within the Realm, or without, compaſs or imagine the Death of the King, *&c. and ſuch Compaſſings, Imaginations*; &c. *ſhall expreſs, utter, or declare, by any Printing, Writing, Preaching, or malicious-adviſed Speaking, being legally convicted thereof by*, &c. *then every ſuch*, &c. *ſhall*, &c. But no man (except our Author) would ſay that this is in affirmance of Stat. *E.* 3. as to the compaſſing the King's Death. The Statute of *E.* 3. does provide, That there muſt be ſome Overt-act; but it does not determine what ſhall be a good and ſufficient Overt-act to prove the Compaſſing: If the matter be clear, it leaves it to the Judges; if there be any doubt or difficulty, then it does expreſly direct the Judges to reſpit

their

their Judgments till the meeting of the Parliament, that the Caſe may be reſolved there. But the Statute 13 *Car.* 2. declares the compaſſing the King's Death, and particularly the expreſſing the ſame *by any Printing, Writing, Preaching, or malicious-adviſed Speaking, to be Treaſon*, the Copulative *And* makes it clear, that the principal End of this part of the Statute was to particulariſe and aſcertain, That ſuch Facts therein mentioned ſhould be ſufficient Overt-acts of the compaſſing during King *Charles*'s Life, that were not ſo by the Statute of *E.* 3. which left it general, and at large. Is not our Author a man of an excellent Head, to apprehend this *to be only a Confirmation of the Old Statute in words at length*? Indeed he does ſay, *That it was agreed to be ſo in the Houſe of Commons*, 1 Jac. 2. *and when a Motion was made to renew that Law, the Lawyers anſwer was, That the* 25 E. 3. *did the ſame thing.* I have enquired of ſome diligent and obſerving Members of that Parliament concerning the truth of this Allegation, and they aſſure me there was no ſuch Anſwer made by the Lawyers, nor no ſuch thing agreed by the Houſe; but they give me this Account of the matter: There was a Bill brought in to renew the Statute of 13 *Car.* 2. and upon the ſecond or third reading, it was moved by Mr. *Tipping* ('tis for his Credit to be named), That there might be an explanatory Proviſo, *That Preaching, Writing, or Speaking againſt* Popery, *and againſt the Doctrines and Principles of the* Church of Rome, *ſhould not be conſtrued or intended within the intent of the Act.* This was thought ſo reaſonable, that it was immediately agreed unto, and a Committee appointed preſently to withdraw into the Speaker's Chamber, to pen the Proviſo, and the Biſhop of St. *Aſaph* came there to be aſſiſting in it. Upon this, the Bill was dropt and let fall, and no man ever after preſſed it further; which may give all men ſatisfaction what uſe was at that time deſigned to be made of it; and that all our Learned Clergy who did ſince Preach and Write againſt Popery, would have been in danger (if the Bill had paſſed) to have been conſtrued into a Treaſon, Præmunire, or ſome

other great Penalty within the intent of that Bill, to the ruine of Them and their Families. This was in King *James's* firſt Parliament, when we had the moſt ſimple, plain, and ſolemn Aſſurances of Protecting our Religion and our Laws, that was poſſible to be deviſed. It does now ſufficiently appear how inſufficiently our Author has anſwered this Argument of the Juſtifier: 'Tis true, he does make an Apology (and a very pretty one it is), *That he is confined to a Sheet, and therefore cannot enlarge.* He ſays, when he comes to anſwer Mr. *H. That he wants time.* But I deſire to know, How it comes that he cannot ſpare time, or that he is limited to a Sheet? Who is it that does ſet theſe bounds unto his Writings? It were to be wiſhed, That the perſon who has ſo great Authority over him as to confine him to a Sheet, would improve it a little further, and engage him not to write at all. If it had been a year ago, I ſhould have preſumed he were thus ſtreightned from the attendance he owed to ſome great Place; for I believe truly, his Parts, Learning, Integrity, and other Qualifications, could not fail of recommending him to an Eminent Office (perhaps *a Recorder of a Great City*, or the like) in the late Reign. The Reader may obſerve what ſort of man he is, who when he is gravell'd, and can offer nothing of Reaſon, is forced to have recourſe to ſo poor and pitiful a ſhift, as to pretend he wants time, or that he is confined to a Sheet, which bears the Price of four Sheets; and, conſidering the value of it, he might have afforded more of them for our Money.

X. In the ſame Page he obſerves, *That the* Juſtifier *lays down a Rule for Conſtruction of Statutes, That a thing particularis'd in one part, is not to be conſtrued within the general words of another part; but that Rule has near fourſcore Exceptions in the Books? Beſides, it comes not to this Caſe; for here is compaſſing the King's Death made Treaſon, and declared by Overt-act; then levying War is made Treaſon.* Now, ſays the Repliant, *nothing can be an Overt-*

act

act of the first, that does any way concern the latter, which is a Non sequitur, *&c.* 1. 'Tis very true, the *Justifier* does lay down the Rule, and does thence deduce, That conspiring to levy War cannot be within the meaning of the Clause of *Compassing the King's Death* in the Stat. *E.* 3. because levying War is particularly mentioned in the Statute after. 2. The Rule is admitted; but it has, it seems, *near fourscore Exceptions*; though, by reason of the misfortune of our Author's *being confined to a Sheet, or time being wanting*, he has not obliged his Reader with one of that great number. It would have been much more material for him to have shewed, That any of the said Exceptions, or the Reason of them, did extend to the Point in Question, than to tire his Reader with a long impertinent Preface, and a tedious insignificant Digression of the King's Prerogative of Peace and War, (which take up two or three Pages). If he had omitted these, he needed not to have exceeded the Standard of a *Sheet*, and yet have room enough to have given better and more satisfactory Answers, if he could. 3. The Consequence, That conspiring to levy War is not an Overt-act of the Compassing, *&c.* because it belongs to another species, is clear from the express words of *Coke* and *Hales*; which see in the *Justification*. And if the Makers of the Statute had designed to conclude Conspiring, *&c.* it would not have cost them above three words more to have added it to the Clause of levying War, where it would have more properly come in, then under the Clause of Compassing, to which it has no Relation, nor no Man could dream of finding it: The positive Opinions of *Coke* and *Hales*, the Authority of a Rule of Law, and the consideration of the motive and end of the Statute, which all make against our Author, do justly merit so great a Complement and Respect to be paid them, that the Case should be admitted to be doubtful; and if it be doubtful, then by the express Direction of the Act, the Judges ought to have suspended their Judgment, till they received the Determination of the Parliament. Our Author refers to the Sheet for several Instances to the purpose; I have examined

mined a great many of them, (at length I was weary) and I'le assure him there was not one that warranted the Judgment in my Lord *Russel*'s Case; Mr. *H.* has been so particular in answering them, that he has saved all others the Labour. I do not say, but that there has been as extravagant Opinions as this, as in the Case of him, who said, *His Son was Heir to the Crown*, meaning a House, that had a Crown for a Sign to it; and of him, *Who wished Stag-horns, and all in* Kings *Belly*, meaning one of that Name, *&c.* These and the like were in violent corrupt times, adjudged Treason; but no man ever defended these Resolutions, or esteem them to be Law, tho they have the Sanction of the judicial Opinions of their side.

XI. He proceeds and says, *The Lord* Cobham's *Case is endeavoured to be answered by a wonder, that Sir* Edward Coke, *late Lord Chief Justice, and then Sheriff, should differ from Mr. Attorney* Coke; *for we know his Thoughts in Sir* Walter Rawleigh's *time, and in his Speeches in* Car. 1. *his time, they are as different each from the other, as the times were.* I have now (as I had before) occasion to reprove our Author for false Recitals; the Justifiers never said, nor wondered, that my Lord *Coke*'s Opinion was different at one time, from what it was at another; and he was so far from saying, that his Opinion was different when he was Attorney, from his Opinion in his third Institution, (which our Author means) that he believed there was no such Resolution, as was pretended in the Lord *Cobham*'s Case, because my Lord *Coke* did not take notice of it in his Inst. where he taught a Doctrine quite contrary; and also, because *Hales* gives another Account of the Offence of the Lord *Cobham*, than was alledged in my Lord *Russel*'s Tryal, by the Kings Council. 2. I am as free to Reproach my Lord *Coke*, for his Carriage against Sir *Walter Rawleigh*, as I am the late King *Charles* the Second Council, for theirs against my Lord *Russel*; but for his Speeches in *Car.* 1. his time,

if

if he means theſe delivered in Parliament; as many as I have read of them, are very Honeſt, and denote a Zeal and Affection to the Laws and Liberties of his Countrey, and do not in the leaſt derogate from the juſt and ancient Prerogatives of the Crown. 3. Upon the whole, there is nothing material here anſwered to the Objections made by the Juſtifier againſt the Authority of the Lord *Cobham's* Caſe, quoted in the Tryal, as will appear by comparing this anſwer with the Juſtification; nor is there any thing ſaid to my Lord *Hales* ſtating *Cobham's* Crime different from the Tryal, from whence we may conclude it was more than a bare Conſpiracy, *&c.*

XII. He ſays, *Sir* Henry Vane's *Caſe is endeavoured to be anſwered by this, that* Syderfin *mentions not the Overt-Act in the Indictment, but he does ſay the Treaſon alledged, was a compaſſing the Kings Death; and every Man knows what Sir* Henry Vane *did to accompliſh that; he neither Signed the Warrant to Execute that Murder, nor was he actually concerned in it; The Juſtifier ſays, He does not remember it printed any where, but in* Syderfin's *Reports; for the refreſhment of his Memory, I'le tell him of another Book, where it is, and that is* Keeble's *Reports* 1 Vol. 304. *and there the Indictment is ſaid to be, for compaſſing the Kings Death, and endeavouring to accompliſh the Treaſon, by Changing and Uſurping the Government, and Levying War; which Caſe does directly overthrow all the Defenders, Juſtifiers, and Repliants Arguments, from the diſtinctneſs or difference of the ſort of Treaſons.* 1. Here is another miſtake, for the Juſtifier does not endeavour to anſwer Sir *Henry Vane's* Caſe, becauſe *Syderfin* mentions not the Overt-Acts; but he does not only endeavour, but does effectually anſwer it, becauſe there was other Matters proved againſt him, that did amount to a good Overt-act; and tho he did not Sign the Warrant to Execute that Murder, yet he was concerned in Deſigns for incompaſſing his Civil Death, which is within the Act, as well as his Natural. 2. The Devil owed our Author a ſhame, when he prompt him to refer us to *Keeble*; for by that

that Book, it expreſly appears, that the Changing and Uſurping the Government, was part of Sir *Henry Vane*'s Charge, as well as Levying War, which does neceſſarily imply the Kings Depoſition, which no man ever doubted, but was Treaſon; but, how comes this to be applicable to my Lord *R*'s Caſe? 3. This Caſe is ſo far from overthrowing all the Defenders, Juſtifiers, and Repliants Arguments, from the diſtinctneſs of the Treaſon, that 'tis plainly conſiſtent with them, and all other Arguments they uſe.

XIII. *Then for Doctor* Story's *Caſe, 'tis hard to juſtify it for Law, whereas there are above forty places, where it is cited, and agreed*, &c. *if any thing be Law, that is ſo, and not diſtinguiſhable from the Caſe in queſtion; but that the Evidence was different, which the Juſtifier would make a reaſon to invalidate this Indictment; the Logick of it paſſeth all underſtanding*, &c. 1. I do ſay, 'Tis hard to juſtify Doctor *Story*'s Caſe according to the ſummary and imperfect Report of it in *Dyer*; but take it with all the Circumſtances, it is Treaſon; and is nothing like my Lord *Ruſſel*'s Caſe, who was never pretended to be guilty of adhering to a Foreign Enemy, nor a deſign of Depoſing the King, as in truth *Story* was. 2. I deſire our Author to reconcile his ſaying here, That the Juſtifier would invalidate the Indictment with what he ſaid before, that the Juſtifier admitted the Indictment to be good, and only quarrelled with the Evidence; but Contradictions and Incongruities, are ſmall Faults. 3. If the Logick of diſtinguiſhing my Lord *Ruſſel*'s Caſe from *Story*'s, becauſe the Evidence againſt them were different, be paſt his underſtanding, I cannot imagine what is within the reach of his Underſtanding; for 'tis clear, that the Evidence is the principal and moſt eſſential Thing to be weighed and conſidered: 'Tis true, our Author has ſaid, That the Evidence was not his Province, but that his Buſineſs was to defend the Court and Council. I have already delivered my Thoughts upon that Expreſſion, and ſhall now further ask our Author one Queſtion concerning it; whether,

whether, if the Evidence was ſhort, and did not warrant the Indictment, it was not the duty of the Court to tell the Jury ſo much, and that therefore they ought to have acquitted the Priſoner? By his Doctrine, if any Man be Indicted of compaſſing Death of the King, and the Evidence be croſſing a River in a pair of Oars, the Court is not to trouble it ſelf about the Evidence, nor to inſtruct the Jury of the inſufficiency of it; and if the Party be Convicted, the Court is in no Fault, becauſe the Indictment was as good as againſt the Murderers of King *Charles* the Firſt, and the Caſes are only diſtinguiſhable by the proof. Now I have been all along under an Error, (and the unanimous Conſent of the Books have led me to it) that the Jurors were entirely to be determined in Points of Law by the Court, and that the Court was to ſtate the Law, ariſing from the Proofs to the Jury, and that they were only Judges of the Fact.

XIV. *In* 2*d* Ander. Grant's *Caſe, 'twas held, That when any Perſon intendeth or contriveth to Levy War for a thing which the Queen by her Law or Juſtice, ought or may do in Government, as Queen; it's not material, whether they intend any hurt to Her Perſon; but if they intend to Levy War againſt the Office and Authority of the Queen, that's enough; and that Reſolution overthrows the Juſtifiers Notion, that* J. S.'s *deſign was only to defend the Laws; though the* 13 Eliz. *was then in force, it's a good Argument to anſwer that Pretence.* 1. I have not 2*d Ander.* by me; 'tis out of Print, and I can't procure it, tho I've ſent to ſeveral Bookſellers. 2. But even as our Author repreſents it, 'tis nothing to his purpoſe, becauſe he was Indicted on the 13 *Eliz.* which made a Conſpiracy to Levy War, Treaſon during her Life; and alſo, becauſe his Deſign was againſt the Office and Authority of the Queen, which implies her Dethroning or Depoſition: But by the whole Tenor of the Evidence againſt my Lord *Ruſſel*, it is plain, he was aſſenting to no Conſultation, Debate or Reſolution, than what was for the ſupport of the Regal Office and Authority,

if the Preſervation of our Religion, Laws and Government be ſo.

XV. Our Author refers us *to the Caſe of the Earls of* Eſſex, *&c. before the then High Steward.* In that Caſe, there was an actual force, and levying War, and therefore not applicable to the Caſe in queſtion; for their Offence was ſpecified in the Stat. *E.* 3. which my Lord *Ruſſel* is not concerned in.

XVI. In page 6. Our Author, under the pretence of juſtifying the Guards, makes a long impertinent Excurſion, and maintains *the King's Prerogative of Peace and War, and challenges any body to ſhew the time that there were no armed men in* England; *and expounds the meaning of the Parliament, that they did not deſign the Guards in their Inſtrument of Grievances.* 1. No man queſtions the King's Prerogative of Peace and War; and the Author muſt own himſelf impertinent to talk of it here, unleſs he will juſtify this Conſequence, That if the King can declare War, *&c. then* he may keep ſtanding Guards in times of Peace. 2. It is as little to the purpoſe, though *England* was never without Armed Men; for we know there were ſeveral Caſtles, Gariſons, *&c.* kept up, and maintained as neceſſary for the defence of the Realm againſt Foreign Enemies; but I challenge him to ſhew me where any Kings in times of peace were allowed to keep, and quarter Soldiers upon the Subjects, until King *Charles* the Second's time. 3. I deſire to know whether the Guards were not part of King *James's Army*? and whether they were not *quartered contrary to Law*? and if ſo, then, I'm ſure, they muſt be included in the *Inſtrument of Grievances*, as well as any other part of the Army. But he takes no notice of what the Juſtifier ſaid, That they were on great debate voted illegal by the Houſe of Commons in King *Charles* the Second's Long Parliament, of whoſe zeal to the Prerogative no man ever doubted.

Nor

Nor did he consider that time was, when Judges and others were impeached for persuading the King to give Liveries to great and unusual numbers of men to attend him, which were no other than Guards. (*Temp. Rich. II.*) That one Article of Male-administration against that King himself, was grounded upon his Armed Multitude of *Cheshire men*. That even in the times of the War betwixt *York* and *Lancaster*, when the Title to the Crown was so tickliſh; yet Standing Armies were not endured then. That King *Henry* the Seventh, having occasion to raiſe some Forces, was limited by Act of Parliament to the Number of Twelve Thousand. That our later Acts against Martial Law, and quartering of Soldiers upon Persons against their Will, presuppoſe all Standing Forces in times of Peace to be Illegal: since without Marſhal-Law, and Quartering of Soldiers, a Standing Force cannot subsiſt. We know of how late standing the very Yeomen of the Guards are: And by an old Act of Parliament we are taught, That *to the King it belongs to prohibit all Force and Arms; And that in order thereunto, His Leiges are bound to Aſſiſt him according to the Laws and Customs of the Realm* (7 Edw. 1.) But I find no Legal Warrant for our King's raiſing a Force in times of Peace and Quiet, without Conſent of Parliament.

XVII. I have now considered all that our Author hath been pleaſed to anſwer to the Half-ſheet called the *Juſtification*, &c. and do conceive the several points it undertook to make out, to be vindicated from our Author's Cavils (*viz.*) That the Judgment against my Lord *Ruſſel* was, 1. Against the Authority of the two beſt, and moſt authentick Opinions of our Lawyers, *Hales* and *Coke*. 2. Against the Opinions of several Parliaments. 3. Against a known Rule and Maxim. 4. And Laſtly, Against the end and inducement of the *Stat. Ed.* 3. And if this be true, then I ſubmit to any impartial Judgment, whether the Noble Lord might not be ſaid to be Murthered? It is not ſuch a Murther as can be puniſhed in the ordinary courſe and methods of

Juſtice, becauſe it was committed under the countenance of Law, which I take to be ſo far from leſſening the guilt, that it is an aggravating Circumſtance, *To pervert that Law which is framed and inſtituted for the ſecurity of the Subject, to be a means of his ruine and deſtruction, by undue, violent, and arbitrary Interpretations of it.* The Original Legiſlators and Founders of our Government never thought, nor could comprehend, that any Age could arrive to ſuch pitch of wickedneſs, and therefore they provided no puniſhments for the offence: As the Law of *Rome* had appointed no puniſhment for Parricide, becauſe they believed no Man would be ſo great a Monſter as to be guilty of it. Crimes of ſuch an extraordinary nature, are to receive their condemnation by the Legiſlative Authority of every Government; and here in *England* it has been very frequent with our Parliaments to enact puniſhments other than were appointed by preceding Laws; or to add to them, when the offence was accompanied with unuſual and aggravating circumſtances; neither can it be pretended that there is any injuſtice in puniſhing by a Law, *ex poſt facto*; any thing that is an offence in it ſelf, and that receives its denomination of evil from an intrinſick quality inherent in it; ſuch as Parricide, which in *Rome* had no puniſhment allotted by the Law; and the barbarous Murders of the Duke of *Glouceſter* in *Calais*, and of the Biſhop of *Rocheſter*'s Servants by Poiſon, were by ſpecial Statutes declared Treaſon, and the Murtherers of the Duke of *Gloucester* underwent the common puniſhment of High-Treaſon; and thoſe of the Biſhop of *Rocheſter*'s Family, were ordered to be Boiled to death; neither of which was the legal puniſhments of their reſpective Crimes: But indeed it would be very unjuſt, at once to make the Offence, and to puniſh a perſon who had been guilty of it, when neither the Word of God, the Light of Natural Reaſon, nor any previous municipal Law did warn or inſtruct him of the Tranſgreſſion; ſuch are the Facts of Coyning of Money, Tranſporting of Wool, and the like, which are very innocent in themſelves, and are unlawful and puniſhable, becauſe they are prohibited

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as things of a publick damage and detriment. Acts of this kind never were, nor ought to be punished without an antecedent Law to justify it. I do not now plead for excepting out of the Indemnity any persons whatsoever; my design is only to shew what is just and lawful, not what may be expedient for the Parliament to determine against such as brought my Lord *Russel* and others to an illegal, cruel, and untimely death; and it is our Author's bold affirmation, *That they are as safe as under an Indemnity*, that has ministred the occasion of discoursing upon this *Topick*. I confess I am very ill instructed in the Cases of the rest that were hurried to their Graves through the violence of the late times; my remembrance of them is not more perfect, than one may be presumed to retain from a transient and cursory perusal of their Trials; but by a general consent of all Lawyers, the Sentence against many of them is not more to be defended than that of my Lord *R.* Mr. *Sidney*'s, and Mr. *Hampden*'s, had the same weak foundation, only with this difference, That the latter pleaded guilty; but it is plain from what has been already said upon my Lord *Russel*'s Case, that he was not, unless he was conscious of some other guilt, than was charged on that Noble Lord. 'Tis true, in all Inferior Jurisdictions and Courts he is estop't to say he is innocent, and that the Plea was extorted from him through menace of Hanging, Drawing and Quartering, because the admittance of such a Plea is repugnant to a Rule of Law, *That there can be no averment against matter of Record*, and the Plea is recorded; but whatever Acts in *pais*, and that are not recorded, a man executes unvoluntarily by duress or threat of being beaten, imprisoned, or fear of other bodily hurt, he may avoid them by pleading the special matter in an Inferior Court; as for the purpose, all Bonds, Specialties, Deeds, Conveyances, *&c.* If a man consider this difference abstracted from the aforesaid Maxim, it will seem very absurd, and unreasonable, that one shall be allowed to disannul an Act he performed to save a beating, or a short Imprisonment (for which the Law would have given him reparation pro-

proportionable to the damage he should sustain) and that Mr. *H.* shall not be received to make void his Plea, by saying, That he was forced to it to save himself and Family from the ignominy of dying under a Gallows; therefore in Cases of this nature the Parliament ought to give aid and relief, which may be done without inconvenience; since the Parliament (the Seat of the Legislative Power) has an unlimited Jurisdiction, and neither is, nor ought to be so streightly bound up as Subordinate Courts. From Mr. *Hamden's* Plea there ought no inference to be made to the prejudice of my Lord *Russel*, since it was altogether involuntary. Upon the whole, I have perused that Noble Lord's Trial with the exactest care and curiosity, and I do profess I can discover no Crime, nor Conspiracy, other than he was engaged in by an hereditary and unshaken Zeal and Concernment for the Religion, Laws and Liberties of his Countrey; and yet our Author has the boldness to repeat in both his Sheets, That his Relations were pleased with the Justice dispenced to him by the Court. His Judgment cannot be defended without reflexion on our present Government, which is founded on the generous, and successful Attempt made by the People of *England*, under the Auspicious Conduct of His present Majesty, to recover their Ancient Birthrights. 'Tis true, we that engaged in this Revolution, are justified by a greater number of breaches and violations of our Laws. And we have carried our resentments further. There were Incroachments sufficient upon the people (as appears before) to authorize whatever he transacted; and we found they improved and grew at length to such a height, that we were forced to abandon our beloved Doctrine of *Passive-Obedience* and *Non-resistance*; for a long time we were restrained the use of other than the Spiritual-weapons of *Prayers* and *Tears*; so long, that all the Secular and Civil Rights of the Kingdom were destroyed: At length those two *Leviathans*, the *Dispencing Power*, and the *High Commission Court* were set up, and began to prey upon the *Liberties* and *Properties* of the Church, and then our *Confessors*,

ſeſſors gave us leave to reſort to other ſort of Arms, which in leſs than ſix weeks time redeemed them and us. For my part, I was bred, and will live and dye in the Communion of the Church of *England*, as by Law eſtabliſhed. I believe it to be the beſt conſtituted Church in the World both for Doctrine and Diſcipline; and as upon the Reformation She caſhiered thoſe luxuriant Ceremonies that in the Church of *Rome* ſpread ſo far as to cover and ſhadow the root and ſubſtance of Religion, ſo She ſeems to retain few more than are competent and neceſſary for the decent and orderly diſcharge of Divine Service; but my Affection to the Church cannot ſo far blind my Judgment, as to approve the conduct of a great many of her Miniſters and Clergy. I was willing to compound with them, and to admit, That *Fighting their Mothers Battle* with ſo great Courage in her late diſtreſs, ſhould be an expiatory ſacrifice to ſhrieve and abſolve them from their former errors and miſcarriages: But I can hardly forgive ſuch as now unſeaſonably return to their Vomit of *Paſſive Obedience* (which they themſelves, by experience, ſo lately found to be abſurd and inconſiſtent with the general Laws of Nature and Self-preſervation) and that endeavour by their example (as much as in them lye) to alienate the hearts of the people from the Government, at a conjuncture, when the common danger of Religion and Laws do abſolutely require the cloſeſt union, and the ſtrongeſt and moſt entire coalition of all the Proteſtants Power and Intereſt. I cannot frame any colourable excuſe or apology for theſe ſort of Men. Their Murmurings and Diſcontents cannot proceed from the influence of their ancient and exploded Principle; for even thoſe ſteps towards the late Change which they encouraged, authorized, or concurred in, were as much a departure from, and a contradiction to the notion of *Non-reſiſtance*, as the *Abdication* it ſelf: Neither can I allow that they can be the reſult of juſt and rational fears of a deſign to turn this well-tempered Monarchy into a Republick; ſince that is more effectually obviated and prevented by ſetling Their Majeſties upon the Throne,

Throne, than it would have been by the *Regency*, or any other project that has been propounded or diſcourſed of; nay, I had almoſt ſaid, That the Regency did change our Monarchy into a Commonwealth; for it ſtript King *James* of all his *Prerogatives* and *Powers*; it left him indeed the Title of a King; but the adminiſtration of the Government was to be lodged and intruſted in other hands. *Sparta* had an Officer that bore the ſtyle of King; but notwithſtanding that, the Government of *Sparta* is tranſmitted to us under the Title of a *Commonwealth*; for in truth, the King had not theſe Juriſdictions nor Franchiſes, in which the Eſſence of *Monarchy* conſiſts. Such a King as there was (of old) in *Sparta*, would the Project of the Regency have made King *James*; which really was no more than to ſet him up as a *Pageant of State*, and a Statue of Authority: But by ſetling the Crown upon Their Majeſties, it is preſerved in its true, rightful and ancient Luſtre, Powers and Prerogatives. 'Tis true, The Rules of the Hereditary Succeſſion are, and muſt have been broke when King *James* was laid aſide, and no perſon whatſoever could, during his Life, be exalted to the Throne under that Qualification; for *non eſt hæres viventis*, *a living Man can have no Heir*, is a Maxim of our Laws. Since therefore all thoughts of King *James*'s Reſtitution were abandoned, and that no perſon could of right lay claim to the Crown, it would have been next degree to madneſs, to appoint any perſon for King, that was not in a capacity to diſcharge the Duty and Office of a King, which is to defend and protect his People. Such a Power I do conceive to be a more eſſential Qualification and Property of a Sovereign Prince, than any Right or Title by Deſcent or Proximity of Blood; for *that* is required by the Fundamental Maxims of Government in general; *this* only by Municipal Laws and Sanctions. So that if a People ſet up for their Supream Governor one that wants ſome Legal Qualifications, the worſt imputation that *malice* can fix upon them, is, that they do tranſgreſs againſt the Laws of their Country; but, if they ſet up one for their Governor

Governor that is not able to *protect* them, they do certainly offend againſt the firſt and original End of all Political Conſtitutions, which is the Publick Peace and Safety: and how far the Municipal Laws of any particular Kingdom or State do retain their force, when they come to interfere with the Superior Laws of Nature and Self-preſervation, and with the Ends of Government in general, I ſubmit to every man's conſideration. What our Anceſtors here in *England* thought of this Matter, may be eaſily collected from the great number they had of Kings *de facto*, that were not ſo *de jure*; and as no man that is verſed in our Hiſtories can be ignorant of this, ſo no man that is any thing acquainted with with our Laws, but muſt know they make no difference (in point of Allegiance) between a King *de facto* and *de jure*. Whatever is High-Treaſon againſt the one, is againſt the other; nay, our Books carry this matter higher, and do teach us, That the levying War under the Authority of a King *de jure* againſt him that is King *de facto*, is ſuch an indelible Character of a Traytor, that he may be tried and condemned in the Reign of ſuch King *de jure*, if ever he happens to be a King *de facto* likewiſe.

As His preſent Majeſty was the only Perſon able to reſtore to us our Religion, and our Ancient Government; ſo it was on Him alone we could have depended for the continuance of theſe Bleſſings. When I reflect upon the Temper and Diſpoſition of our *Engliſh* Army after the *Revolution*, upon the Powers and Strength of *France* and *Ireland*, and upon the uncertainty of *Scotland*, I do not ſee how it was poſſible for us to have ſupported our ſelves, if the Prince of *Orange* had withdrawn himſelf, and his Troops, from among us, and left us to ſhift for our ſelves, as undoubtedly he would, and ought to have done, if we had excluded him from any ſhare in the *Regal Office*; for every body knows he made ſuch a Figure in the Government of the States General of the United Provinces, as rendred him one of the greateſt and moſt conſiderable Princes of Chriſtendom; and

was it reaſonable to expect he ſhould have relinquiſhed his Poſt in his Native Countrey, and be content to live among us in the quality of a Subject? Was it reaſonable that he ſhould expoſe his Life, his Fortune, and all that was dear to him, to reſcue us from that State of Thraldom and Miſery, that we and our Poſterities ſeemed to have been condemned to; and ſhould we make ſo ungrateful a return on our parts, as to place him in a meaner Degree, and in a more private Condition of life, than he was before he underwent ſuch hazards, and ſuſtained ſuch Difficulties for our ſakes? Certainly the diſſatisfaction ſome People expreſs at our preſent Eſtabliſhment, muſt be occaſioned for want of a due and ſerious conſideration of that *Deliverance* which Providence has made our King the Inſtrument of. If any man maturely reflects upon the preceding and concurring Accidents and Emergencies of the late aſtoniſhing *Revolution*, he muſt admit, that God Almighty did in an extraordinary and particular manner direct, conduct and approve the Riſe, Progreſs and Concluſion of it.

To conclude, The ſetting the Character of my Lord *Ruſſel* in its true and deſerved Light; the redeeming his Name and Memory from the ſtain and infamy of the higheſt Crimes; the proving his Childrens Title to the greateſt degree of Honor and Vertue on the part of their Father (which by the Univerſal conſent of all they will derive and inherit from their Mother,) and reſtoring to the Laws and Juſtice of *England* their primitive Credit and Reputation, are the ſole abſtracted Motives which prompted me to this undertaking. I have not left the leaſt *handle* for malice or ill nature to ſuſpect, that what has been here ſaid in relation to the Government, or my Lord *Ruſſel*, is the reſult of any external hope of advantage or preferment, or of a ſervile diſpoſition to flatter ſuch as are in Power. My Reſolution not to be known, will both ſecure me againſt thoſe Imputations, and againſt that Contempt, which is the reward of ill Writers.

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I do not pretend to be of ſo moroſe, nor *Stoical* a temper, as to think that at all times, and upon all occaſions, men ſhould confine themſelves to ſpeak or write nothing but what is the true and real Dictates of their Judgments. The extravagant ſtrains of Flattery which *Pliny* beſtows upon the *Roman* Emperors in his Panegyricks, was no hindrance to his living and dying with the reputation of a very honeſt and ſincere Perſon: To magnify the Power of *Jupiter*, and the other Heathen Gods, in a Declaration or Poem, was never eſteemed Blaſphemy againſt the Great *Jehovah*: And if a man be to ſpeak or write to his Miſtreſs, 'twill be ill manners to tell her that he courts her for her Fortune, though it be the truth. I do not cenſure the Univerſity Orator (who, I've heard, did in his Speech to *Charles* the Second, highly commend him for his Sincerity, Singleneſs of Heart, and his exact obſervation of his Word and Promiſes) for any other thing than this, That he ſhould have praiſed him for ſome other Vertues, than thoſe he was ſo univerſally known never to have practiſed. Upon theſe Occaſions 'tis expected men ſhould exert their Wit and Fancy, not their Veracity; and I cannot deny, That to make truth on theſe Occaſions the ſtandard, may be clowniſhneſs and ill-breeding. But, I'm ſure, I would as ſoon cut off my Right Hand, as ſuffer it to write any thing that is not the reſult of my ſober and deliberate Thoughts and Judgment upon ſo ſerious, weighty and ſolemn a Subject as I have here preſumed to diſcourſe upon.

FINIS.

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